

Attorney Docket: 00276
U.S. Application No. 09/749,993 Examiner Campen Art Unit 3691
Appellant's Brief in Support of Appeal

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Barksdale

Group Art Unit: 3691

Application No. 09/749,993

Examiner: Campen

Filed: December 28, 2000

Attorney Docket: 00276

Title: "Carried Forward Service Units and Commoditization Thereof"

APPELLANT'S BRIEF IN SUPPORT OF APPEAL

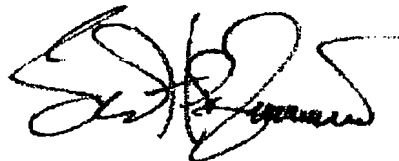
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The Assignee/Appellant hereby submits one (1) copy of a Brief in Support of Appeal for the above-identified application. This Brief is accompanied by a credit card authorization form to charge the 37 C.F.R. § 41.20 (b) (2) large entity fee of \$510.00.

A Notice of Appeal was filed July 12, 2007.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,



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REAL PARTY IN INTEREST

BellSouth Intellectual Property Corporation, as assignee of U.S. Patent Application 09/749,993, and now doing business as AT&T BLS Intellectual Property, Inc., is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences pertaining to the above-identified application.

STATUS OF CLAIMS

Claims 1-9 and 11-21 were finally rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 5,884,284 to Peters, *et al.*

Claim 10 was finally rejected under 35 U.S.C. § 103 (a) as being obvious over U.S. Patent 5,884,284 to Peters, *et al.*

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The Appellant appeals these final rejections of claims 1-21.

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STATUS OF AMENDMENTS

No amendments have been submitted subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter relates to carrying forward, or "rolling over," service unit credits. Exemplary embodiments apply to any service (*e.g.*, gas, electronic, cable, or Internet) provider. According to an exemplary embodiment, the "rolling over" of service unit credits applies to the service of cellular telephony. A cellular telephone subscriber, for example, may subscribe to a predetermined number of minutes of use on a monthly basis. At the end of the subscriber's monthly billing cycle, some of those minutes may be unused. In conventional service contracts, those unused minutes expire. Exemplary embodiments, however, permit the subscriber to carry forward, or "roll over," those unused minutes. Suppose, for example, that the subscriber has 100 minutes remaining at the end of a monthly billing cycle. Instead of losing those unused minutes, exemplary embodiments carry forward, or "roll over," those unused minutes to the next month's billing cycle. Moreover, the unused minutes may be treated as a commodity, thus allowing the subscriber to buy, sell, or trade those unused minutes.

A) Independent Claim 1

In accordance with an exemplary embodiment, independent claim 1 recites a method, comprising:

providing a service to a customer, the service being measurable in quantifiable service units used by the customer such that billing for the service to the customer is based at least in part on a number of the service units used;

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allowing the customer to obtain service unit credits to be applied against service units used by the customer;

billing for the service to the customer according to a billing cycle;
for each billing cycle:

applying service unit credits obtained by the customer and extant against the service units used by the customer during the billing cycle; and

if service unit credits remain after applying the service unit credits obtained by the customer and extant against the service units used by the customer, carrying forward the remaining service unit credits to be available during a subsequent billing cycle; and

allowing the customer to treat service unit credits as a commodity, whereby the commoditized service unit credits may be bought, sold, and/or traded for services and/or goods.

Textual support for claim 1 is also provided. Service is provided to a customer, the service being measurable in quantifiable service units used by the customer such that billing for the service to the customer is based at least in part on a number of the service units used (*see, e.g.,* page 4, lines 19-22). The customer is allowed to obtain service unit credits to be applied against service units used by the customer (*see, e.g.,* page 4, lines 22-24). The customer is billed according to a billing cycle (*see, e.g.,* page 4, lines 22-24). The service unit credits obtained by the customer and extant are applied against the service units used by the customer during the billing cycle (*see, e.g.,* page 4, lines 25-27). If service unit credits remain after applying the service unit credits obtained by the customer and extant against the service units used by the customer, then the remaining service unit credits are carried forward to be available during a subsequent billing cycle (*see, e.g.,* page 4, lines 29-30). *See also id.* at page 8, lines 9-11. The customer is also allowed to treat service unit credits as a commodity, whereby the commoditized service unit credits may be bought, sold, and/or traded for services and/or goods (*see, e.g.,* page 5, lines 1-2). *See also id.* at page 9, lines 8-11.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

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The Appellant appeals the final rejection of claims 1-9 and 11-21 under 35 U.S.C. § 102 (e) as allegedly being anticipated by U.S. Patent 5,884,284 to Peters, *et al.*

The Appellant also appeals the final rejection of claim 10 under 35 U.S.C. § 103 (a) as allegedly being obvious over U.S. Patent 5,884,284 to Peters, *et al.*

ARGUMENT

1. *Peters* Does Not Teach Every Claimed Feature of the Claims, so the § 102 (e) Rejection is Improper

Peters cannot anticipate claims 1-9 and 11-21. Independent claim 1 recites many features that are not disclosed by *Peters*. Independent claim 1, for example, recites “*applying service unit credits obtained by the customer and extant against the service units used by the customer during the billing cycle.*” Independent claim 1 also recites “*if service unit credits remain after applying the service unit credits obtained by the customer and extant against the service units used by the customer, carrying forward the remaining service unit credits to be available during a subsequent billing cycle*” (emphasis added).

Peters cannot anticipate such features. *Peters* is entirely silent to “*carrying forward the remaining service unit credits to be available during a subsequent billing cycle.*” As the below paragraphs explain, *Peters* admittedly collects “current unbilled usage data” and then prepares a bill. Examiner Campen argues that this disclosure is equivalent to “*applying service unit credits obtained by the customer and extant against the service units used by the customer during the billing cycle*” and “*carrying forward the remaining service unit credits to be available during a subsequent billing cycle.*” See, e.g., Examiner Campen, Final Office Action mailed February 12, 2007, at page 3, lines 9-14. The Assignee cannot agree with Examiner Campen’s conclusion, and hence this appeal.

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The Appellant must, very respectfully, disagree with Examiner Campen. *Peters'* disclosure is in no way equivalent to "*applying service unit credits ... during the billing cycle*" and "*carrying forward the remaining service unit credits ... during a subsequent billing cycle,*" as recited in independent claim 1. *Peters* discloses a computer program that manages subscriber account information. See U.S. Patent 5,884,284 to *Peters, et al.* at column 5, lines 50-52. A database stores data on each subscriber. See *id.* at column 6, lines 4-9. *Peters* generates bills on a periodic basis. See *id.* at column 28, lines 62-66. Examiner Campen finally rejects claims 1-9 and 11-21 based on column 29, lines 3-18, which are reproduced below:

Upon indication of a billing generation requirement for a particular subscriber, the present invention accesses the database for that subscriber, collects current unbilled usage data for billing (including regular monthly fees, pay-for-view fees, and equipment and maintenance charges), historical information (such as balances forwarded and recent payments yet to be credited), and any other information to be included on the bill (such as announcements and advertising). The invention then prepares a bill for the subscriber on a standard format. The bill images are sent to a printing house where they are printed, placed in individual envelopes, and mailed to each subscriber. Then, the system's databases are updated accordingly (particularly regarding indications of what has been billed and is now an account receivable).

See *id.* at column 29, lines 3-18. As the Board now realizes, *Peters* makes no mention of "*applying service unit credits ... during the billing cycle*" and "*carrying forward the remaining service unit credits ... during a subsequent billing cycle,*" as recited in independent claim 1. Even though *Peters* explains that its teachings are applicable to telephony, *Peters*, quite simply, makes no disclosure or suggestion of independent claim 1's features. *Peters*, then, cannot be reasonably interpreted to "[*apply*] service unit credits ... during the billing cycle" and "[*carry*] forward the remaining service unit credits ... during a subsequent billing cycle," as recited in independent claim 1.

For at least the reasons given above, *Peters* cannot anticipate independent claim 1. Because dependent claims 2-9 and 11-21 incorporate the features of claim 1 and recite additional features, Appellant respectfully asserts that claims 2-9 and 11-21 are also allowable over *Peters*.

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Peters, then, cannot anticipate claims 1-9 and 11-21, so the Board is thus respectfully requested to remove the § 102 (e) rejection of claims 1-9 and 11-21.

2. *Peters* Fails to Teach or Suggest Every Feature of Claim 10, so the § 103 (a) Rejection is Improper

The Office also finally rejected claim 10 under 35 U.S.C. § 103 (a) as being obvious over *Peters*. Claim 10, however, cannot be obvious over *Peters*. Claim 10 depends from independent claim 1 and, thus, incorporates the same distinguishing features. As the above paragraphs explained, *Peters* is entirely silent to “*applying service unit credits ... during the billing cycle*” and “*carrying forward the remaining service unit credits ... during a subsequent billing cycle.*” Dependent claim 10, then, cannot be obvious over *Peters*.

Moreover, the Appellant cannot agree with the Examiner's reasoning and conclusion. Dependent claim 10 recites “*allowing the customer to obtain the service unit credits from the third party at a discounted rate.*” Examiner Campen asserts that *Peters* teaches “mixes of subscriptions of services offered by cable companies together with wireless or wired telephones, wherein such services are offered by a television company and a telephone company, hence a third party.” The Appellant must, very respectfully, disagree with Examiner Campen. *Peters* only discloses that its teachings are applicable to telephony and telecommunications services. See *Peters*, at column 5, lines 12-18. See also *id.* at column 30, lines 15-25. *Peters* never discloses or suggests “mixes of subscriptions of services,” as the Examiner asserts, and the Examiner cites no passages from *Peters* in support of this assertion.

Dependent claim 10, then, cannot be obvious over *Peters*. Claim 10 depends from independent claim 1 and, thus, incorporates “*applying service unit credits ... during the billing cycle*” and “*carrying forward the remaining service unit credits ... during a subsequent billing cycle.*” Dependent claim 10, then, cannot be obvious over *Peters*, so the Board is respectfully requested to remove the § 103 (a) rejection of claim 10.

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CONCLUSION

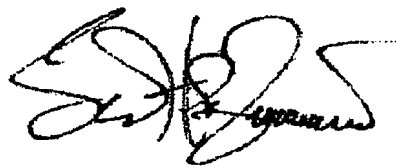
In view of the foregoing reasons, the Appellant respectfully requests removal of the § 102 (e) of claims 1-9 and 11-21. The Appellant also respectfully requests removal of the § 103 (a) rejections of claim 10.

AUTHORIZATION FOR PAYMENT OF FEES

If there are any other fees due in connection with the filing of this brief in support of appeal, please charge the fees to the credit card identified in the Credit Card Payment Form submitted herewith. If any additional fees are required, such as a fee for an extension of time under 37 C.F.R. § 1.136, such extension of time is requested and the fee should also be charged to the credit card.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,



Scott P. Zimmerman
Attorney for the Assignee/Appellant
Reg. No. 41,390

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CLAIMS APPENDIX

U.S. Patent Application No. 09/749,993 Pending Claims

1. A method comprising:

providing a service to a customer, the service being measurable in quantifiable service units used by the customer such that billing for the service to the customer is based at least in part on a number of the service units used;

allowing the customer to obtain service unit credits to be applied against service units used by the customer;

billing for the service to the customer according to a billing cycle;

for each billing cycle:

applying service unit credits obtained by the customer and extant against the service units used by the customer during the billing cycle; and

if service unit credits remain after applying the service unit credits obtained by the customer and extant against the service units used by the customer, carrying forward the remaining service unit credits to be available during a subsequent billing cycle; and

allowing the customer to treat service unit credits as a commodity, whereby the commoditized service unit credits may be bought, sold, and/or traded for services and/or goods.

2. The method of claim 1 wherein allowing the customer to obtain service unit credits comprises providing a predetermined number of the service unit credits to the customer as part of a predetermined service package.

3. The method of claim 2 wherein allowing the customer to obtain service unit credits comprises providing a predetermined number of the service unit credits to the customer for each billing cycle as part of a predetermined service package.

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4. The method of claim 2 wherein allowing the customer to obtain service units further comprises allowing the customer to purchase service unit credits in addition to the service unit credits provided as part of the service package.
5. The method of claim 1 wherein allowing the customer to obtain service units comprises allowing the customer to purchase the service unit credits from a provider of the service.
6. The method of claim 5 wherein allowing the customer to obtain service units comprises allowing the customer to purchase the service unit credits prior to applying such purchased credits against service units used by the customer.
7. The method of claim 5 wherein allowing the customer to obtain service units comprises allowing the customer to purchase the service unit credits after it is determined that excess service units used by the customer exist after all service unit credits obtained by the customer have been applied against such service units used by the customer, the purchased service units credits being applied against such excess service units.
8. The method of claim 1 wherein the service is provided by a service provider and wherein allowing the customer to obtain service units comprises allowing the customer to obtain the service unit credits from a third party other than the service provider.
9. The method of claim 8 wherein allowing the customer to obtain service units comprises allowing the customer to obtain the service unit credits from the third party as a promotion.
10. The method of claim 8 wherein allowing the customer to obtain service units comprises allowing the customer to obtain the service unit credits from the third party at a discounted rate.

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11. The method of claim 8 wherein allowing the customer to obtain service units comprises allowing the customer to obtain the service unit credits from the third party as part of a revenue operation operated by the third party.
12. The method of claim 8 wherein the service is provided by a service provider and wherein allowing the customer to obtain service units comprises allowing the customer to purchase the service unit credits from a third party other than the service provider, the third party having obtained the service credit units from the service provider.
13. The method of claim 1 wherein providing the service to the customer comprises providing cellular telephone service to the customer.
14. The method of claim 13 wherein providing the service to the customer comprises providing cellular telephone service to the customer, the service being measurable in minutes.
15. The method of claim 1 wherein providing the service to the customer comprises providing a service to the customer selected from a group consisting of gas or electric or cable television or Internet access utility service, a landline telephone service, a repair service, and a goods providing service.
16. The method of claim 1 wherein for an (n)th billing cycle, carrying forward the remaining service unit credits comprises carrying forward such remaining credits to be available during an (n+1)th billing cycle.
17. The method of claim 1 further comprising, if excess service units used by the customer exist after all service unit credits obtained by the customer have been applied against such service units used by the customer, carrying forward the excess service units to a subsequent billing cycle and applying service unit credits subsequently obtained by the customer against the carried-forward service units.

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18. The method of claim 1 wherein the service is provided by a service provider and wherein allowing the customer to treat service unit credits as a commodity comprises allowing the customer to expend service unit credits on goods and/or services provided by the service provider.
19. The method of claim 1 wherein the service is provided by a service provider and wherein allowing the customer to treat service unit credits as a commodity comprises allowing the customer to expend service unit credits on goods and/or services provided by a third party other than the service provider.
20. The method of claim 1 wherein the service is provided by a service provider and wherein allowing the customer to treat service unit credits as a commodity comprises allowing the customer to transfer service unit credits to a third party as a gift.
21. The method of claim 1 wherein the service is provided by a service provider and wherein allowing the customer to treat service unit credits as a commodity comprises allowing the customer to transfer service unit credits to a third party as a barter transaction.

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EVIDENCE APPENDIX

There are no submissions pursuant to 37 CFR § 41.37 (c) (ix) for U.S. Patent Application No. 09/749,993.

RELATED PROCEEDINGS APPENDIX

There are no submissions pursuant to 37 CFR § 41.37 (c) (x) for U.S. Patent Application No. 09/749,993.